

PCT/EP2003/011529

## **PCT**

### INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 2002/112	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)					
International application No. PCT/EP2003/011529	International filing date (da 17 October 2003 (1					
International Patent Classification (IPC) or n A61K 9/00	Lational classification and IPC					
Applicant  LTS LOHMANN THERAPIE-SYSTEME AG						
<ol> <li>This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</li> <li>This REPORT consists of a total of6 sheets, including this cover sheet.</li> </ol>						
amended and are the basis fo 70.16 and Section 607 of the	This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).					
These annexes consist of a to	otal of 2 sheets	3.				
3. This report contains indications rela	ting to the following items:					
I Basis of the report						
II Priority						
III Non-establishment	of opinion with regard to nov	elty, inventive s	tep and industrial applicability			
IV Lack of unity of inv	ention					
Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement						
VI Certain documents cited						
VII Certain defects in the international application						
VIII Certain observations on the international application						
Date of submission of the demand		e of completion	of this report			
30 April 2004 (30.04.	2004)	18	March 2005 (18.03.2005)			
Name and mailing address of the IPEA/EP	Aut	horized officer				
Facsimile No.	Tel	Telephone No.				

Form PCT/IPEA/409 (cover sheet) (July 1998)

Translation



### INTERNATIONAL PRELIMINARY EXAMINATION REPORT

### International application No.

### PCT/EP2003/011529

With regard to the elements of the international application:*   the international application as originally filed   the description:   pages	I. Bas	sis of the r	report				
the description:  pages	1. W	ith regard t	to the elements of the international application:*				
pages	Γ	the international application as originally filed					
pages	$\overline{\triangleright}$	the de	scription:				
pages	<u> </u>		1.6				
the claims: pages				, filed with the demand			
pages		pages	filed with the letter of				
pages		71 she ale	·i				
pages			1 12	, as originally filed			
pages							
the drawings:				, filed with the demand			
the drawings: pages page			, filed with the letter of				
pages	_	<b>-</b>					
pages	<b>└</b>	_		as originally filed			
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2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.  These elements were available or furnished to this Authority in the following language which is:  the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).  the language of publication of the international application (under Rule 48.3(b)).  the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/ or 55.3).  3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:  contained in the international application in written form.  filed together with the international application in computer readable form.  furnished subsequently to this Authority in written form.  furnished subsequently to this Authority in computer readable form.  The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.  The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.  4. The amendments have resulted in the cancellation of:  the description, pages	ļ	pages					
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		•		d to this report.			

v.	Reasoned statement under Article 3 citations and explanations supporting	5(2) with regard to novelty ng such statement	, inventive step or industrial appl	licability;
1.	Statement			
	Novelty (N)	Claims	1-12	YES
		Claims		NO
	Inventive step (IS)	Claims		YES
		Claims	1-12	NO NO
	Industrial applicability (IA)	Claims	1-12	YES
		Claims		NO

### 2. Citations and explanations

2a)

- The numbering of documents D1-D7 cited in the present report is based on the documents cited in the search report. This numbering will also be used in further proceedings. In particular, unless otherwise stated, the cited passages of the respective documents should be taken into account.
- Novelty and inventive step (PCT Article 33(2) and (3))

The subject matter of independent claims 1 and 2 is

novel since none of the cited documents describes a transmucosal form of administration containing a mixture of a phosphatidyl choline wherein the fatty acid groups are at least 90% saturated.

In particular, D1 or D5 describes or suggests a transmucosal form of administration containing lecithin or eilecithin (see D1: claims 1 and 20; D5: column 2, line 39, claims 1-2). Standard commercial lecithin normally contains approximately the same amounts of saturated and unsaturated fatty acids. However, neither D1 or D5 nor any of the other documents suggests that the phosphatidyl cholines

employed are hydrated (conversion of the unsaturated fatty acids into saturated fatty acids), or that phosphatidyl cholines containing at least 90% saturated fatty acids are used. The claims are therefore novel over the prior art.

2b) The problem addressed by the present invention can be considered as the following: the provision of a transmucosal form of administration characterised by a low degree of solubility within the oral cavity and a quick and constant release of the agent over a longer period of time.

The solution proposed by the applicant is the use of a phosphatidyl choline in which the fatty acids are at least 90% saturated.

since there is no evidence that the problem is solved by the above-mentioned phosphatidyl choline, the subject matter of the present application does not involve an inventive step.

In order for an inventive step to be acknowledged, the applicant is requested to **provide evidence** that the desired effects (lower solubility, quick but long release of agent) are based on this technical feature. The mere assertion that this is so is insufficient.

For example, the applicant could show that a phosphatidyl fraction in which the fatty acids are only 80% saturated will not solve the problem, whereas a phosphatidyl fraction in which the fatty acids are 90% saturated will bring about the desired effects in the transmucosal form of administration.

The applicant's attention is drawn here to the fact that it also appears that the use of a copolymer of the maleic acid with an alkyl vinyl ether is an essential feature for solving the problem.

In the absence of evidence for the desired effects, it is not possible to acknowledge an inventive step (problem not solved) and the proposed solution is considered an obvious alternative (e.g. with respect to D1 or D5), because it appears that it is only a routine task that a person skilled in the art would carry out so as to differentiate it from the prior art.

### For the regional phase:

- Details relating to the subject matter of the invention (e.g. further details concerning the advantages of the invention or the problem of interest) but which have no basis in the original documents, can only be mentioned in the letter of response, but cannot be included in the application (PCT Article 34(2)(b)).
- 4) The applicant's attention is drawn to the fact that the application may not be amended in such a way that its subject matter goes beyond the content of the application as originally filed.

So as to facilitate the examination of amended application documents with respect to PCT Article 34(2)(b), the applicant is requested to indicate clearly the amendments made, whether additions, replacements or deletions, and to indicate the

passages in the originally filed application on which these amendments are based (see also PCT Rule 66.8(a)).

If desired, these details can be given in handwritten form on copies of the respective parts of the original application.

Rec'd PCT/PTO 0 4 MAY 2005

VERTRAG ÜBER DIE INTERNATIONALE ZUSAMI NARBEIT AUF DEM GEBIET DES PATENTWESENS

## PCT

REC'D 2 1 MAR 2005

# INTERNATIONALER VORLÄUFIGER PRÜFUNGSBERICHT

(Artikel 36 und Regel 70 PCT)

Akte	enzeio	hen d	es Anmelders oder Anwalts				<del></del>	• • • • • • • • • • • • • • • • • • • •
		02/11		WEITERES VOI	RGEHEN	siehe Mitteilung vorläufigen Prü	g über die Übersend ifungsberichts (Form	lung des internationale ablatt PCT/IPEA/416)
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### INTERNATIONALER VORLÄUFIGER **PRÜFUNGSBERICHT**

Internationales Aktenzeichen PCT/EP 03/11529

I. Grun	dlage	des	<b>Berich</b>	ts
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1. Hinsichtlich der Bestandteile der internationalen Anmeldung (Ersatzblätter, die dem Anmeldeamt auf eine Aufforderung nach Artikel 14 hin vorgelegt wurden, gelten im Rahmen dieses Berichts als "ursprünglich eingereicht" und sind ihm nicht beigefügt, weil sie keine Änderungen enthalten (Regeln 70.16 und 70.17)): Beschreibung, Seiten in der ursprünglich eingereichten Fassung Ansprüche, Nr. 1-12 eingegangen am 28.02.2005 mit Telefax". 2. Hinsichtlich der Sprache: Alle vorstehend genannten Bestandteile standen der Behörde in der Sprache, in der die internationale Anmeldung eingereicht worden ist, zur Verfügung oder wurden in dieser eingereicht, sofern unter diesem Punkt nichts anderes angegeben ist. Die Bestandteile standen der Behörde in der Sprache: zur Verfügung bzw. wurden in dieser Sprache eingereicht; dabei handelt es sich um: die Sprache der Übersetzung, die für die Zwecke der internationalen Recherche eingereicht worden ist (nach Regel 23.1(b)). · No. 1 - 1 - 18 1.3 die Veröffentlichungssprache der internationalen Anmeldung (nach Regel 48.3(b)). die Sprache der Übersetzung, die für die Zwecke der internationalen vorläufigen Prüfung eingereicht worden ist (nach Regel 55.2 und/oder 55.3). 3. Hinsichtlich der in der internationalen Anmeldung offenbarten Nucleotid-, und/oder Aminosäuresequenz ist die internationale vorläufige Prüfung auf der Grundlage des Sequenzprotokolls durchgeführt worden, das: in der internationalen Anmeldung in schriftlicher Form enthalten ist. zusammen mit der internationalen Anmeldung in computerlesbarer Form eingereicht worden ist. bei der Behörde nachträglich in schriftlicher Form eingereicht worden ist. bei der Behörde nachträglich in computerlesbarer Form eingereicht worden ist. Die Erklärung, daß das nachträglich eingereichte schriftliche Sequenzprotokoll nicht über den Offenbarungsgehalt der internationalen Anmeldung im Anmeldezeitpunkt hinausgeht, wurde vorgelegt. Die Erklärung, daß die in computerlesbarer Form erfassten Informationen dem schriftlichen Sequenzprotokoll entsprechen, wurde vorgelegt. 4. Aufgrund der Änderungen sind folgende Unterlagen fortgefallen: Beschreibung. Seiten: Ansprüche. Nr.: Zeichnungen, Blatt:

Dieser Bericht ist ohne Berücksichtigung (von einigen) der Änderungen erstellt worden, da diese aus den

(Auf Ersatzblätter, die solche Änderungen enthalten, ist unter Punkt 1 hinzuweisen; sie sind diesem Bericht

angegebenen Gründen nach Auffassung der Behörde über den Offenbarungsgehalt in der ursprünglich

Formblatt PCT/IPEA/409 (Januar 2004)

beizufügen.)

eingereichten Fassung hinausgehen (Regel 70.2(c)).

5. 🗆

# INTERNATIONALER VORLÄUFIGER PRÜFUNGSBERICHT

Internationales Aktenzeichen

PCT/EP 03/11529

6. Etwaige zusätzliche Bemerkungen:

V. Begründete Feststellung nach Artikel 35(2) hinsichtlich der Neuheit, der erfinderischen Tätigkeit und der gewerblichen Anwendbarkeit; Unterlagen und Erklärungen zur Stützung dieser Feststellung

1. Feststellung

Neuheit (N) Ja: Ansprüche 1-12

Nein: Ansprüche

Erfinderische Tätigkeit (IS) Ja: Ansprüche

Nein: Ansprüche 1-12

Gewerbliche Anwendbarkeit (IA) Ja: Ansprüche: 1-12

Nein: Ansprüche:

2. Unterlagen und Erklärungen:

siehe Beiblatt

## PRÜFUNGSBERICHT - BEIBLATT

#### Zu Punkt V

Begründete Feststellung hinsichtlich der Neuheit, der erfinderischen Tätigkeit und der gewerblichen Anwendbarkeit; Unterlagen und Erklärungen zur Stützung dieser Feststellung

- 1) Es wird auf die folgenden Dokumente verwiesen: Die Numerierung der im vorliegenden Bescheid genannten Dokumente, D1-D7, beruht auf den im Recherchenbericht zitierten Dokumenten. Diese Numerierung wird auch im weiteren Verfahren beibehalten. Insbesondere sind, soweit nicht anders vermerkt, die zitierten Textstellen der jeweiligen Dokumente zu berücksichtigen.
- Neuheit und erfinderische Tätigkeit (Art. 33(2) und (3) PCT) 2)
- Der Gegenstand der unabhängigen Ansprüche 1 und 2 ist neu denn kein der zitierten Dokumenten beschreibt ein transmukosale Darreichungsform enthaltend einer Mischung aus einer Phosphatidylcholin, worin die Fettsäurereste zu mindestens 90% gesättigt sind. Insbesondere D1 oder D5 beschreibt oder legt eine transmucosale Darreichungsform enthaltend Lecithin oder Eilecithin nahe (siehe D1: Ansprüche 1 und 20; D5: Sp.2 Z.39, Ansprüche 1-2). Ein herkömmliches kommerzielles Lecithin enthälter normalerweise annähernd gleiche Mengen an gesättigten wie ungesättigten Fettsäuren. Jedoch weder in D1 oder D5, noch in den anderen Dokumenten wird ein Hinweis darauf gefunden, dass die eingesetzten Phosphatidylcholine hydriert sind (Umwandlung der ungesättigten Fettsäuren in gesättigte Fettsäuren), noch dass Phosphatiylcholine, enthaltend mindestens 90% an gesättigten Fettsäuren, eingesetzt werden. Somit sind die Ansprüche neu gegenüber dem Stand der Technik.
- 2b) Die mit der vorliegenden Erfindung zu lösende Aufgabe wird darin gesehen: Wie kann man, eine transmucosale Darreichungsform, welche sich durch eine geringe Löslichkeit innerhalb der Mundhöhle und eine rasche und über einen längeren Zeitraum konstante Wirkstoffabgabe auszeichnet, bereitstellen.
  - Die vom Anmelder vorgeschlagene Lösung ist die Verwendung von einer Phosphatidylcholin, worin die Fettsäure zu mindestens 90% gesättigt sind.

# INTERNATIONALER VORLÄUFIGER PRÜFUNGSBERICHT - BEIBLATT

Da es kein Beweis vorliegt, daß das Problem mit der obengenannten Phosphatidylcholin gelöst ist, beruht der Gegenstand der vorliegenden Anmeldung auf keine erfinderische Tätigkeit.

Damit die erfinderische Tätigkeit anerkannt wird, ist der Anmelder gebetet, **Beweis vorzuliegen**, daß die erwünschte Effekte (geringere Löslichkeit, rasche aber lange Wirkstoffabgabe) auf diese technische Merkmale zurückzuführen sind.

Die Behauptung alleine ist nicht ausreichend.

Zum Beispiel könnte der Anmelder zeigen, daß eine Phosphatidylfraktion, worin die Fettsäure von nur bei 80% gesättigt sind, wird das Problem nicht lösen, wobei eine Phosphatidylfraktion, worin die Fettsäure bei 90% gesättigt sind, wird die erwünschte Effekte an die transmucosale Darreichungsform verleihen.

Hiermit ist der Anmelder darauf hingewiesen, daß es außerdem scheint, daß die Verwendung von einem Copolymer der Maleinsäure mit einem Alkylvinylether, ein wesentliche Merkmal ist, damit das Problem gelöst wird.

Solange kein Beweis für die erwünschte Effekte vorliegen, kann keine erfinderisch Tätigkeit anerkannt werden (Problem not solved) und die vorgeschlagene Lösung wird als nahe liegende Alternative (z.B. gegenüber D1 oder D5) betrachtet, denn es scheint, dass es sich nur um eine Routinearbeit handelt, die der Fachmann erledigen wird, damit es vom Stand der Technik unterscheidet.

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- Angaben, die zwar den Gegenstand der Erfindung betreffen (z. B. weitere Einzelheiten bezüglich der Vorteile der Erfindung oder der zu lösenden Aufgabe), aber keine Grundlage in den ursprünglichen Unterlagen haben, können nur im Antwortschreiben erwähnt, aber nicht in die Anmeldung aufgenommen werden (Artikel 34(2)b) PCT).
- 4) Der Anmelder wird darauf hingewiesen, daß die Anmeldung nicht in der Weise abgeändert werden darf, daß ihr Gegenstand über den Inhalt der Anmeldung in der

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- Charles Art Control (1995年) - Art Control (1995年)





Um die Prüfung von geänderten Anmeldungsunterlagen im Hinblick auf Artikel 34(2) b) PCT zu erleichtern, wird der Anmelder gebeten, die durchgeführten Änderungen, unabhängig davon, ob es sich um Änderungen durch Hinzufügen, Ersetzen oder Streichen handelt, deutlich aufzuzeigen und anzugeben, auf welche Stellen in der ursprünglich eingereichten Anmeldung sich diese Änderungen stützen (siehe auch Regel 66.8 a) PCT).

Gegebenenfalls können diese Angaben in handschriftlicher Form auf Kopien der betreffenden Teile der ursprünglichen Anmeldung erfolgen.





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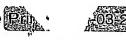


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### Patentansprüche

- Flächenförmige transmucosale pharmazeutische Dameichur gsform, dadurch gekennzelchnet, dass sie besteht aus einer festen Lösung des Wirkstoffes in einer Phosphatidylcholinfraktion, worin die Fettsäurereste zu mindestens 90 % gesättigt sind, und gegebenenfalls weiteren pharmazeutisch verträglichen Hilfs- und Zusatzstoffen.
- 2. Flächenförmige transmucosale pharmazeutische Darreichungsform, dadurch gekennzeichnet, dass sie besteht aus einer festen Lösung des Wirkstoffes aus einer Mischung einer Phosphatidylcholinfraktion, worin die Fettsäurereste zu mindestens 90 % gesättigt sind, und einem Copolymer der Maleinsäure mit einem Alkylvinylether und gegebenenfalls weiteren pharmazeutisch verträglichen Hilfs- und Zusatzstoffen.
  - 3. Darreichungsform nach Anspruch 1 oder 2, dadurch gekennzeichnet, dass sie mindestens 80 Gew.-% der Phosphatidylcholinfraktion enthält.
- Darreichungsform nach einem der Ansprüche 1 bis 3, dadurch
   gekennzeichnet, dass sie Polyvinylpyrrolidon als Zusatzstoff enthält.
  - Darreichungsform nach einem der Ansprüche 1 bis 4, dadurch gekennzeichnet, dass der Wirkstoff zur Behandlung des Missbrauchs von Suchtmitteln, sowie der Abhängigkeit von diesen geeignet ist.
  - Darreichungsform nach einem oder mehreren der Ansprüche 1 bis 5, dadurch
    gekennzeichnet, dass der Wirkstoff ein kondensiertes Indoklerivat und/oder
    dessen Säureadditionssalz darstellt.
- 7. Darreichungsform nach einem oder mehreren der Ansprüche 1 bis 5, dadurch gekennzeichnet, dass der Wirkstoff 7-Azabicyclo(2.2.1)-heptan, 7-Azabicyclo(2.2.1)-hepten und/oder ein Derivat dieser Verbirdung darstellt.





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- 8. Darreichungsform nach einem oder mehreren der Ansprüche 1 bis 5, dadurch gekennzeichnet, dass der Wirkstoff Ebibatidin und/oder eir Derivat diese Verbindung darstellt.
- Darreichungsform nach einem oder mehreren der Ansprüche 1 bis 5, dadurch gekennzeichnet, dass der Wirkstoff ein Benzyliden- und Cinnamyliden-Annabasiene oder ein Derivat dieser Verbindung darstellt.
- 10. Darreichungsform nach einem oder mehreren der Ansprüche 1 bis 5, dadurch gekennzeichnet, dass der Wirkstoff aus der Gruppe der Verbindungen Mecamylamin, Hypericin, CP-52655 und Buproprion und/cder einem ihrer Derivate ausgewählt ist.
  - 11. Darreichungsform nach einem oder mehreren der Ansprüc ne1 bis 5, dadurch gekennzeichnet, dass der Wirkstoff aus der Gruppe der Oxazolidinone-Derivate und der Befloxatone ausgewählt ist.
  - 12. Darreichungsform nach einem oder mehreren der Ansprüche 1 bis 5, dadurch gekennzeichnet, dass der Wirkstoff der Cannabinoid Receptor (CB 1)
    Antagonist SR 141716 ist.

